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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1130

WOLYNN ASSOCIATION OF SEPARATE BAPTIST IN CHRIST OF KENTUCKY; WHEELER DAVIS, S. C. JOHNSON, J. A. HUFF, Members of Presbytery Board of Wolynn Association of Separate Baptist in Christ of Kentucky; P. T. PEPPER; SAM GENTRY; LESLIE GENTRY; ROXIE DAVENPORT; COTS HORAN; ROY HORAN; J. H. BLOYD; ADRIAN DAVIS; OLLEN DAVENPORT; RALPH LOBB; SAMUEL DAVIS . . . . . Petitioners

vs.

OAK GROVE SEPARATE BAPTIST CHURCH; TERRY BISHOP; RALPH JEFFRIES; CURTIS JEFFRIES; COMBY GENTRY; CHOLOREH COMLEY; IVAN JONES; IVAN COMPTON

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. _____

NOLYNN ASSOCIATION OF SEPARATE BAPTIST IN CHRIST OF KENTUCKY; WHEELER DAVIS, S. C. JOHNSON, J. A. HUFF, Members of Presbytery Board of Nolynn Association of Separate Baptist in Christ of Kentucky; F. T. PERVIS; SAM GENTRY; LESLIE GENTRY; ROXIE DAVENPORT; COVE MORAN; ROY MORAN; J. H. BLOYD; ARMAN DAVIS; OLLEN DAVENPORT; RALPH LOWE; SAMUEL DAVIS - - - - - - - - *Petitioners*

v.

OAK GROVE SEPARATE BAPTIST CHURCH; TERRY BISHOP; RALPH JEFFRIES; CURTIS JEFFRIES; COBY GENTRY; CHORSEN CONLEY; IVAN JONES; IVAN COMPTON - - - *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

The petitioners pray that a writ of certiorari issue to review the judgments of the Court of Appeals of the State of Kentucky. The opinion affirming the lower court was rendered May 15, 1970 and the petition for rehearing was overruled October 2, 1970.

OPINIONS BELOW

The opinion of the Court of Appeals of Kentucky is reported at ____ S. W. 2d ____.

JURISDICTION

The opinion and order of the lower court were made and entered June 18, 1969. The opinion of the Court of Appeals of Kentucky was rendered May 15, 1970 with the petition for rehearing being overruled and judgment entered October 2, 1970, and copies thereof are appended to this petition in the Appendix at pages 19-24.

The Jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

The Nolynn Association of Separate Baptist in Christ of Kentucky is a religious tribunal formed in 1819 by Separate Baptist churches. This body assembles yearly and by majority vote and with equal representation passes and adopts By-Laws and Articles of Faith with which it governs all the churches and maintains and perpetuates the doctrines of this Separate Baptist religion. The Presbytery Board of this general church body had presented to it facts concerning some of its ministers as to their abiding by the doctrines of this Separate Baptist faith and the Board reviewed and dis-ordained three ministers. This caused a schism in the Oak Grove Separate Baptist

Church with one faction rebelling against the judgments of the Presbytery Board and with their meeting and attempting to withdraw from this general church body they had united themselves with. The Association and the Presbytery Board of same and several members of the Oak Grove Separate Baptist Church did not recognize the withdrawal and the contention that this church was not bound by the decisions of the Board and three suits followed. The Petitioners sought to enjoin the church from interfering in any way with its decisions as to disciplinary action taken and its efforts to appoint a minister for the church until the church was back in harmony with the Association. The Respondents sought to have the State Courts declare the church to be autonomous and not subject to the By-Laws and doctrines of the Nolynn Association. The court consolidated the suits and reversed the judgments of the Presbytery Board, declared the church autonomous and subject to its own government and enjoined the Nolynn Association from interfering in any way with the church.

The questions presented are:

1. When three Separate Baptist churches united and formed their general church government, adopting By-Laws and Articles of Faith for the purpose of governing, maintaining and perpetuating their religious beliefs, did the civil courts violate the restraints of the First and Fourteenth Amendments of the United States Constitution when they interceded, interpreted and defined the laws and doctrines of this body and entered

judgment reversing the decisions made by this religious body?

2. Can civil courts, by declaring a church to be autonomous, void the contractual relationship of such church with its higher church government without violating the rights of the higher church government and the other churches that are united with same under the First and Fourteenth Amendments of the United States Constitution?

STATUTES, FEDERAL RULES, AND REGULATIONS INVOLVED

The pertinent portions of the Constitution are the First Amendment and the Fourteenth Amendment and the By-Laws and Articles of Faith adopted by the Association during the years 1966 and 1967 which are set forth in the Appendix.

STATEMENT

The Association and the Presbytery Board of same filed suit #1647 in the Green Circuit Court to enjoin the church and the minister concerned from interfering with judgment of the Presbytery Board. The Board based its right to enter judgment under the By-Laws adopted by these churches in 1966 and 1967 as follows:

> 4. To clarify the position of the Presbytery, it is as follows:
>
> (a) The Presbytery has the (Ecclesiastical) right and power to investigate any ordained official or any serious matter in the churches that may

affect the harmony and doctrine of this Association and has the power to deal with such, as they deem proper.

The minister filed a motion to dismiss and answer and alleged that he was in accord with the harmony and doctrine of the Association; that he hadn't received notice properly and that he had not been turned over to the Board and that an injunction would violate his substantial rights under the First Amendment to the Constitution of the United States; that the Church was autonomous and had voted to withdraw from the Association and therefore the governing body had lost its control over he and the church. Two more suits were filed with each alleging the same issues. These were consolidated. The Petitioners relied upon the By-Laws and Articles of Faith these churches had adopted over the years and the powers granted by same when disputes arose over disciplinary action or doctrines. The Respondents admitted the By-Laws and Articles of Faith as having been adopted by all the churches but contended that the church was autonomous and could do as it pleased by majority vote. The Circuit Court in its Opinion held that the Church was autonomous and thus not subject to the By-Laws and Articles of Faith and reversed the judgments entered by the Presbytery Board. On appeal the Court of Appeals affirmed the judgment of the Circuit Court and overruled the petition for rehearing.

The stage in the lower court and Court of Appeals at which and manner in which, the federal questions sought to be reviewed were raised are set out in the

Appendix, pages 25-48, instead of in the Statement due to the length of same.

The question is whether or not the State Courts can intercede and censor and define the laws and doctrines of this Separate Baptist Association and transfer the authority from this body to the church in cases of dispute of this nature. The Circuit Court opinion recognized the By-Laws and Articles of Faith that were adopted by these churches and the contractual relationship that existed and that under same they had the right to ordain and discipline ministers and other church officials, to investigate any of the churches, to decide on any withdrawal from the Association, but censored the religious tribunal because they had only had some of these doctrines in printed form since the year 1953 or maybe back to 1943; censored the Association for adopting certain authority over the ministers as what the court described "for the first time in 1965," and censored the Association and Separate Baptist doctrines pertaining to their late date in showing in the By-Laws in 1966 the manner in which a church could withdraw.

The lower Court in its opinion said the basic question was whether the church was an independent church, self-governing local church, or subject to the control of the Association. The Court said:

> "It is true that for many years, the Nolynn Association has had a Presbytery Board, certainly as far back as 1919, possibly farther. This Board was concerned only with ordaining deacons and ministers, until 1967 when the By-Laws of the As-

sociation were amended so as to give the Association authority to control a local church, if the church was not conforming to what the Association considered acceptable as to not only doctrine but all other matters."

The Circuit Court in its Opinion also stated:

"as the word Association itself implies, the Association is no more than a volunteer organization of the various churches. As such, a Church has a right to withdraw its membership from the Association and the Association can expel or dismiss a Church from membership for any reason a majority of the delegates might deem proper"

And the lower Court further said:

"that a Church does not lose its independence, or congregational form of government, by joining an Association"

On appeal the Court of Appeals in its Opinion affirming the lower Court commented on and censored these churches for the change they had made in the doctrines adopted by them as to the manner in which a church may withdraw and said:

"(the withdrawal regulation appeared in 1966, less than two years prior to the commencement of the controversy between Oak Grove Church and the Association)"

The Court of Appeals said the church contended that the withdrawal provisions:

"are an assumption of power by the Board unwarranted by traditional Separate Baptist Church organization"

The Court said:

"Membership in an association does not prevent the church government from being congregational in form"

And further quoting from the Opinion the Court of Appeals said:

"Because freedom of religion is protected by the First Amendment, the courts ordinarily are unwilling to become involved in the resolution of controversies over religious doctrines and practices, Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U. S. 440, 21 L. Ed. 658, 89 S. Ct. 601 (1969); Pelphrey v. Cochran, —— S. W. 2d —— (February 27, 1969). Religious disagreements are more appropriately settled by the person or group of persons who, according to the type organization employed in the particular church, have been vested with decision-making authority. The center or location of organizational authorities varies with different sects and its location is really the chief issue here. Courts have accepted jurisdiction, in cases involving the withdrawal of a local church from the general church, for the very limited purpose of determining the nature of the church government."

The argument in brief for the Petitioners to the State Court of Appeals was:

"It is our contention that the secular court should not take jurisdiction over the verdict of a religious body exercising disciplinary action taken against ministers in accordance with the rules and regulations of the body designated to take any disciplinary action called for. Interference or taking jurisdiction over this would be in violation of their rights as a religious body under the First Amendment of the U. S. Constitution and would be contrary to the latest decisions handed down by the United States Supreme Court and in conflict with the decisions handed down by the Court of Appeals of Kentucky over a very long period of time. In Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Pres. Church, 89 S. Ct. 601 (1969) it was said"

On petition for rehearing the Petitioners contended:

"The question in this case is whether churches that unite and bind themselves together with laws and Articles of Faith are bound by the decisions of their religious tribunal and whether or not secular courts can take jurisdiction or interfere with the judgments made by the religious tribunals set up by these churches to settle their disputes and regulate and enforce their doctrines. It is not a matter of when they adopted certain By-Laws. It is not the question of what they were before they united themselves. It is not a question of their changing their laws over the years or what powers they exercised many years ago or five years ago or ten. The question is whether or not these people have a right to exercise their type of religion in the manner they have selected and whether or not the State Courts have a right to

interfere with their exercise of this religion. Are you denying them their freedom of religion under the provisions of the First Amendment of the United States Constitution which says:

> 'Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.' "

Also in the petition for rehearing it was stated:

> "We must recognize the federal constitutional protection these religious groups now have. The Supreme Court of the United States didn't say that part of the churches that unite themselves; it didn't say the non-congregational churches that unite themselves; it didn't say small member churches or large member churches; it didn't say minority group churches or larger group churches; it said ALL WHO UNITE THEMSELVES TO SUCH A BODY. Again, we repeat what the Supreme Court has just said in this regard and the print has hardly dried on same: Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U. S. 440, 21 L. Ed. 648, 89 S. Ct. 601 (1969)"

The State Court was saying in its opinion that the First Amendment and the above Supreme Court case did not apply if the Court was merely determining the center or location of authority. The Courts classified all churches as prelatical, presbyterian or congregational; then classified this church as congregational and that this was thus the center or location of authority by saying no more. But in doing this they were transferring the authority from the general church govern-

ment to what the Court described as another independent church government and they applied their own departure-from-doctrine in doing so. They were thus resolving who would have control of the local church property by resolving underlying controversies over religious doctrines. The Kentucky Courts were acting in violation of the restraints of the First Amendment identical to the way the Georgia Courts were when this Court decided Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church.

REASONS FOR GRANTING THE WRIT

The Courts are determining who will have this church property by interfering with and interpreting the laws and doctrines of the general church government set up by these churches. Disciplinary action taken in accordance with the general church laws and doctrines should not be subject to review by the civil courts. The First Amendment enjoins the employment of organs of government for essentially religious purposes. The Courts are accusing the general church government of departure from the tenets of faith and practice that existed when the local church united with the general church body. The Courts are using their own standard to interpret these laws and doctrines and using this as a reason for transferring the authority from the general church government back to the local church. After the By-Laws and Articles of Faith are adopted then the Nolynn Association has the right to exercise these laws and doctrines in accordance with the interpretation and definition they give to these

church laws and doctrines. The Courts are not only interpreting these laws and doctrines it is abolishing them and declaring them to be ineffectual as to any church the State considers to be an independent church. They are declaring all contractual relationship between these churches and their general church body to be unilateral if the church is by state standards an independent church. In applying the State Standard the Courts find the word "Association" as meaning voluntary. That since the word itself means voluntary the church is not bound by its contractual relationship with its general church government. The Courts gave no consideration to the interpretation of the church laws and doctrines by the Presbytery Board of the Association that is set up to interpret these laws and doctrines and make application of them to disputes of any nature.

In Presbyterian Church In the United States, *et al.* v. Mary Elizabeth Blue Hull Mem. Presbyterian Church, *et al.*, 393 U. S. 440, 89 S. Ct. 601, this Court said:

> "All who unite themselves to such a body (the general church) do so with an implied consent to (its) government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that

> those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

In the above case this Court also quoted from its decision in Gonzales v. Roman Catholic Archbishop of Manila, 280 U. S. 1, 50 S. Ct. 5, 74 L. Ed. 131 (1929), and said:

> "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise"

In that case this Court also referred to Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church In North America, 344 U. S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952), in which the North American Churches declared their independence from the general church and with the State of New York passing a statute recognizing their administrative autonomy and with the New York Courts upholding this statute. In Kedroff you reversed and said:

> "The opinion (in Watson v. Jones) radiates * * * a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now

be said to have federal constitutional protection as a part of the free exercise of religion against state interference"

And speaking of the New York Statute, the Court said further,

"By fiat it displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment"

Quoting from the above Presbyterian Church, *et al.* v. Mary Eliz. Hull, *et al.*:

"The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general

> church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of the religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.
>
> "Thus, a civil court may no more review a church decision applying a state departure-from-doctrine standard than it may apply that standard itself"

Since the decision in the Georgia case this Court has reversed the Ohio Courts for the same reasons in Serbian Orthodox Church Congregation of St. Demetrius of Akron v. Keleman, *et al.*, 393 U. S. 527, 89 S. Ct. 849 (1969), and has reversed the Maryland Courts in Maryland and Virginia Eldership of the Churches of God, *et al.* v. Church of God at Sharpsburg, Inc., *et al.*, 393 U. S. 528, 89 S. Ct. 850 (1969). This question was also decided in Sharp v. Sigler, 408 F. 2d 970 (1969).

The State Courts are doing indirectly what they admit they cannot do directly. They are contending that a finding of the place of authority or the transfer of authority by the Court does not violate the restraints of the First Amendment because the church would be deciding the issue and not the Court; that in granting

the church the power to settle this dispute it is not interfering with the religious controversy itself therefore it is not acting adverse to the Mary Eliz. Hull case quoted above. The Court contends that some religious government has to decide the issue and that the Court is merely advocating which government has the decision making authority which it says is the Church because the Court has declared the church to be autonomous. Anyway one looks at the Courts' decisions the end result is that they have weighed the meaning and significance of disputed religious doctrines and have passed the control of matters that are ecclesiastical from one church authority to another and in doing this they eliminate the general church government. These Separates had to leave Virginia in 1753 because of State interference with their general church government. They established themselves again in North Carolina in 1755 and again set up a general church government which North Carolina did not sanction and again they were prosecuted and persecuted by the State. They migrated into Kentucky and Tennessee during the Revolutionary War and reestablished themselves in these territories. They formed a general church government for their churches in Kentucky in 1787 and re-formed in 1803. In 1819 this general church government was formed from churches in Kentucky south of the Kentucky River and named the Nolynn Association of Separate Baptists In Christ of Kentucky. Writ of certiorari should be granted because the State Courts are violating the restraints of the First Amendment by interpreting

and defining the doctrines of this general church government and reversing its decisions that have been made in accordance with their own interpretation of their church laws and doctrines. The existence of this Separate Baptist religion is dependent upon this. In order to survive they must be allowed to group themselves together and govern themselves with the laws and doctrines they adopt.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that a petition for a writ of certiorari should be granted.

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CERTIFICATE OF SERVICE

I, J. Wood Vance, Jr., attorney for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the _____ day of December, 1970, I served copies of the foregoing Petition for writ of certiorari on the Respondents as follows:

By mailing copies in duly addressed envelopes, with first class postage prepaid, to their attorneys of record: Shelley T. Riherd and Robert Richardson (Riherd & Richardson), 117 East Washington Street, Glasgow, Kentucky.

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Counsel for Petitioners